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CLEARINGHOUSE RULE 97-006

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section Trans 259.04 (3), as that section is amended by SEC. 5 of Clearinghouse Rule 97-006, appears to conflict with s. 348.27 (9m) (a) 1., Stats. The statutory section authorizes the Department of Transportation to issue annual or consecutive month permits for the transportation of raw forest products from field to storage or processing facilities in vehicles or vehicle combinations that exceed the maximum gross weight limits by not more than 10,000 pounds. However, SEC. 5 of Clearinghouse Rule 97-006 amends s. Trans 259.04 (3) to authorize the department to issue overweight permits for the transportation of raw forest products, which may include movement from a location where raw forest products have been cut, stored or processed. While the statute appears to allow issuance of overweight permits only from the point where the forest products are cut to storage or processing facilities, Clearinghouse Rule 97-006 appears to also allow transportation from storage or processing facilities. The department should explain its statutory authority for SEC. 5 of Clearinghouse Rule 97-006.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. Trans 253.01, the correct statutory reference is to “s. 348.27 (9) (a), Stats.,” not “s. 348.27 (9a), Stats.” In addition, 1995 Wisconsin Act 347 did not create s. 348.27 (9) (a), Stats., but rather amended the statutory section to authorize the department to issue annual or consecutive month permits for the transportation of overlength or overweight vehicles carrying a greater variety of products than were allowed under prior law. It is suggested that the phrase “as created by 1995 Wisconsin Act 347” be deleted from s. Trans 253.01. The incorrect reference to s. 348.27 (9) (a), Stats., also appears in s. Trans 253.02.

b. Section Trans 253.05 (1) provides that the department may issue permits for vehicles under ch. Trans 253 only if the vehicle and any load satisfy the requirements for a permit under s. 348.25, Stats. The department should consider whether it would be possible to be more specific concerning the requirements under s. 348.25, Stats., that must be met. Most of the provisions in s. 348.25, Stats., relate to the department's authority to impose conditions for permits and to the fees to be charged for permits, neither of which appear to be requirements for a permit.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Trans 253.02, the term "permit" is defined to mean multiple trip overweight or oversize permits ". . . which includes a permit page, and all required attachments, including a copy of this chapter." This rule section should be redrafted to specify more clearly what "a permit page" is and what are the "required attachments" to a permit.

b. In s. Trans 253.03 (1), it is suggested that the term "oversize" be replaced with the term "overlong" because s. 348.27 (9) (a), Stats., only authorizes the issuance of vehicle loads exceeding statutory length or weight limitations.

c. Section Trans 253.04 (9) requires applicants for permits that seek authority to operate upon local roads or county highways to submit written proof that permission for operation has been granted by "any local authority or person in charge of maintaining those highways." This language appears to be unnecessarily vague and therefore it is suggested that the phrase be replaced with the statutory language that written proof that permission has been granted be obtained from the "officer in charge of the maintenance of the highway."

d. Section Trans 253.05 (5) and (8) appear to conflict. Section Trans 253.05 (5) provides that a permit may be issued if all of the vehicle's nonsteering axles are equipped with at least four tires. Section Trans 253.05 (8) states that, if a nonsteering axle is equipped with fewer than four tires, the axle may not be considered for purposes of determining the maximum weight of the vehicle under the permit. Subsection (8) therefore appears to authorize nonsteering axles to be equipped with fewer than four tires while sub. (5) states that all of the vehicle's nonsteering axles must be equipped with at least four tires as a condition of obtaining a permit. The department should attempt to clarify this apparent conflict.